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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Douglas Wayne Derello, Jr.,  
Plaintiff,

v.

Unknown,  
Defendant.

No. CV 21-01946-PHX-MTL (JFM)

**ORDER**

On November 15, 2021, Plaintiff Douglas Wayne Derello, Jr., who is confined in the Arizona State Prison Complex-Eyman, filed a pro se civil rights Motion to Perpetuate Preservation of Documents pursuant to Rule 27(a) of the Federal Rules of Civil Procedure. Plaintiff did not pay the \$49.00 miscellaneous filing fee or file an Application to Proceed In Forma Pauperis. The Court will give Plaintiff 30 days to pay the filing fee or file a complete Application to Proceed In Forma Pauperis.<sup>1</sup>

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<sup>1</sup> Plaintiff should take note that a duty to preserve evidence arises “when a party knows or should know that certain evidence is relevant to pending or future litigation.” *Surowiec v. Cap. Title Agency, Inc.*, 790 F. Supp. 2d 997, 1005 (D. Ariz. 2011) (quoting *Ashton v. Knight Transp., Inc.*, 772 F. Supp. 2d 772, 800 (N.D. Tex. 2011)). **In addition to filing a Rule 27(a) motion**, Plaintiff can separately request Arizona Department of Corrections officials retain “in the anticipation of litigation” the video footage he refers to in his Motion. *See* Fed. R. Civ. P. 37(e) (authorizing sanctions “[i]f electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery”).

**I. Payment of Filing Fee**

The fee for filing “any document that is not related to a pending case or proceeding” is \$49.00. *See* 28 U.S.C. § 1914(b); Judicial Conference Schedule of Fees, District Court Miscellaneous Fee Schedule 1 (effective Dec. 1, 2020), foll. 28 U.S.C. § 1914. A prisoner must either pay the \$49.00 filing fee in a lump sum or, if granted the privilege of proceeding in forma pauperis, pay the \$49.00 filing fee incrementally as set forth in 28 U.S.C. § 1915(b)(1). An application to proceed in forma pauperis requires an affidavit of indigence and a *certified* copy of the inmate’s trust account statement for the six months preceding the filing of the Motion. *See* 28 U.S.C. § 1915(a)(2). An inmate must submit statements from each institution where he was confined during the six-month period. *Id.* To assist prisoners in meeting these requirements, the Court requires use of a form application. LRCiv 3.4.

If a prisoner is granted leave to proceed in forma pauperis, the Court will assess an initial partial filing fee of 20% of either the average monthly deposits or the average monthly balance in Plaintiff’s account, whichever is greater. 28 U.S.C. § 1915(b)(1). An initial partial filing fee will only be collected when funds exist. 28 U.S.C. § 1915(b)(4). The balance of the \$49.00 filing fee will be collected in monthly payments of 20% of the preceding month’s income credited to an inmate’s account, each time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2).

Because Plaintiff has not paid the \$49.00 filing fee or filed an Application to Proceed In Forma Pauperis, Plaintiff will be permitted 30 days from the filing date of this Order to submit a properly executed and certified Application to Proceed In Forma Pauperis, using the form included with this Order, or pay the \$49.00 filing and administrative fees.

The Arizona Department of Corrections (ADC) has notified the Court that a certified trust fund account statement showing deposits and average monthly balances is available from the ADC’s Central Office. *Accordingly, Plaintiff must obtain the certified*

1 *copy of his ADC trust fund account statement for the six months immediately preceding the*  
 2 *filing of the Complaint from the ADC's Central Office.*

## 3 **II. Warnings**

### 4 **A. Address Changes**

5 Plaintiff must file and serve a notice of a change of address in accordance with Rule  
 6 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other  
 7 relief with a notice of change of address. Failure to comply may result in dismissal of this  
 8 action.

### 9 **B. Possible Dismissal**

10 If Plaintiff fails to timely comply with every provision of this Order, including these  
 11 warnings, the Court may dismiss this action without further notice. *See Ferdik v. Bonzelet*,  
 12 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure  
 13 to comply with any order of the Court).

## 14 **IT IS ORDERED:**

15 (1) Within **30 days** of the date this Order is filed, Plaintiff must either pay the  
 16 \$49.00 filing fee **or** file a complete Application to Proceed In Forma Pauperis and a  
 17 certified six-month trust account statement.

18 (2) If Plaintiff fails to either pay the \$49.00 filing fee or file a complete  
 19 Application to Proceed In Forma Pauperis within 30 days, the Clerk of Court must enter a  
 20 judgment of dismissal of this action without prejudice and without further notice to Plaintiff  
 21 and deny any pending unrelated motions as moot.

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Dated this 23rd day of November, 2021.

Michael T. Liburdi  
United States District Judge